

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1532416018 Fee: \$124.00  
RHSP Fee:\$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 11/20/2015 10:03 AM Pg: 1 of 44

Report Mortgage Fraud  
800-532-8785

1013 14000032489

The property identified as: PIN: 17-09-120-013-0000

Address:

Street: 400-410 West Huron Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60654

Lender: MB Financial Bank, N.A.

Borrower: Huron Sedgwick Development LLC

Loan / Mortgage Amount: \$32,460,880.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: F596571C-FCDF-465B-BB23-D2356D31E305

Execution date: 11/19/2015

CCRD REVIEWER

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**This document prepared by and after  
recording return to:**

Quarles & Brady LLP  
300 North LaSalle Street, Suite 4000  
Chicago, Illinois 60654  
Attn: Joel V. Sestito, Esq.

Property Address:

400-410 West Huron Street  
Chicago, Illinois 60654

Property Index Nos.:

17-09-120-013-0000  
17-09-120-014-0000

**CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND  
ASSIGNMENT OF LEASES AND RENTS**

**THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS** (as the same may be amended, supplemented or otherwise modified from time to time this "Mortgage") is made as of November 19, 2015, by **HURON SEDGWICK DEVELOPMENT LLC**, an Illinois limited liability company ("Borrower"), whose address is c/o Smithfield Properties, LLC, 126 West Chicago Avenue, Chicago, Illinois 60654, for the benefit of **MB FINANCIAL BANK, N.A.**, a national banking association, and its successors and assigns, whose address is 363 West Ontario, 2nd Floor, Chicago, Illinois 60654 (the "Administrative Agent"), as administrative agent for certain financial institutions (together with their successors and assigns, the "Lenders") and for the benefit of the Lenders.

**WITNESSETH:**

The Lenders are making loans to Borrower (the "Loan") in the aggregate, maximum principal amount of Thirty-Two Million Four Hundred Sixty Thousand Eight Hundred Eighty and No/100 Dollars (\$32,460,880.00) pursuant to that certain Construction Loan and Security Agreement dated as of even date herewith, made by and among Borrower, Administrative Agent, and the Lenders, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein (said Construction Loan and Security Agreement and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "Loan Agreement"). The maximum amount of principal, interest and other indebtedness (now or hereafter owed) secured by this Mortgage shall not exceed Sixty-Four Million Nine Hundred Twenty-One Thousand Seven Hundred Sixty and No/100 Dollars (\$64,921,760.00). The Loan is due and payable in full on the Maturity Date as set forth in the

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Loan Agreement or accelerated pursuant to the terms hereof or of any other Loan Document (as hereinafter defined). This Mortgage encumbers certain real estate located in Cook County, Illinois, legally described on Exhibit A attached hereto, and payment of the Obligations (as defined in the Loan Agreement) and all other obligations of Borrower are secured by this Mortgage, financing statements and other security documents (this Mortgage, the Loan Agreement, the Rate Management Agreements (as defined below), and all other documents evidencing or securing the Loan (as amended, modified, replaced or restated from time to time) are collectively hereinafter referred to as the "Loan Documents"). As used herein, the term "Rate Management Agreements" shall mean any agreement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars and forwards), including without limitation, any schedules, confirmations and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising, and in each case as amended, modified or supplemented from time to time. The Loan will bear interest at a variable rate of interest.

To secure (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time, and any and all late charges, and all other indebtedness evidenced by or owing under the Notes and any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing, (ii) the payment of all other indebtedness which this Mortgage by its terms secures, and (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Loan Agreement, the Notes and each of the other Loan Documents, and any Rate Management Agreements (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "Debt"), Borrower does hereby irrevocably and unconditionally GRANT, WARRANT, SELL, CONVEY, TRANSFER, MORTGAGE AND ASSIGN to Administrative Agent, for the benefit of Lenders, their successors and assigns, all estate, right, title and interest that Borrower now has or may later acquire in and to the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, VIII and IX below, all of same being collectively referred to herein as the "Mortgaged Property".

## GRANTING CLAUSE I:

THE LAND located in Cook County, Illinois, which is legally described on Exhibit A attached hereto and made a part hereof (the "Land");

## GRANTING CLAUSE II:

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of Borrower now or hereafter acquired in and to any of the foregoing, (the "Improvements");

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## GRANTING CLAUSE III:

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by Borrower, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights");

## GRANTING CLAUSE IV:

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by Borrower and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, cranes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring, and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the "Fixtures"); it being agreed that all of said property owned by Borrower and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Mortgage; provided however, any Fixtures owned by tenants shall be specifically excluded hereunder;

## GRANTING CLAUSE V:

TOGETHER WITH the following:

All personal property of every nature whatsoever now or hereafter owned by Borrower or used in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Borrower in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Borrower or on its behalf, including without limitation, any and all Goods, Investment Property,

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Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Illinois, as the same may be amended from time to time (the "Code"), of Borrower located on the Land or in the Improvements which are now or in the future owned by Borrower and used or obtained for use in connection with the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof, or any construction on or at the Land or the Improvements;

All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or improvements thereon or proceeds of any sale, option or contract to sell the Land or improvements thereon or any portion thereof,

Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing.

All of the books and records pertaining to the foregoing (all of the foregoing being referred to as the "Personal Property"); provided however, any Personal Property owned by tenants shall be specifically excluded hereunder;

## GRANTING CLAUSE VI:

TOGETHER WITH all right, title and interest which Borrower hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property (herein collectively referred to as the "Premises") or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), and all right, title and interest which Borrower now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to Borrower any statutory rights;

## GRANTING CLAUSE VII:

TOGETHER WITH any and all Awards and Insurance Proceeds, as each are hereinafter respectively defined, or proceeds of any sale, option or contract to sell the Premises or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and Borrower hereby authorizes, directs and empowers Administrative Agent, on behalf of the Lenders, at its option, on Borrower's behalf, or on behalf of the successors or assigns of Borrower, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable attorneys' fees, costs and disbursements, to apply the Net Proceeds, as hereinafter defined, to the extent not utilized for the Restoration of the Mortgaged Property as provided in Section 7 or Section 8 hereof, to payment of the Debt,



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notwithstanding the fact that the same may not then be due and payable or that the Debt is otherwise adequately secured; and Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Administrative Agent to confirm such assignment to Administrative Agent, for the benefit of the Lenders of any such proceeds;

## GRANTING CLAUSE VIII:

TOGETHER WITH all rights reserved to or granted to the developer or declarant under the provisions of any (i) declaration of restrictive covenants and easements affecting the Land or the Premises, or (ii) declaration of condominium ownership for the institution of a regime of condominium ownership affecting the Land or the Premises or otherwise granted to the developer;

## GRANTING CLAUSE IX:

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which Borrower now has or hereafter may acquire of, in and to the Premises, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by Borrower or by anyone on behalf of Borrower to Administrative Agent, for the benefit of the Lenders;

TO HAVE AND TO HOLD the Mortgaged Property, unto Administrative Agent, for the benefit of the Lenders, and their successors and assigns, IN FEE SIMPLE forever; subject, however, to those encumbrances which Administrative Agent, on behalf of the Lenders has approved in the Loan Agreement or otherwise approved in writing (the "Permitted Encumbrances");

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default hereunder, Borrower shall be permitted to possess and use the Mortgaged Property;

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if (i) Borrower shall pay and perform in full when due the Debt and shall duly and timely perform and observe all of the covenants and conditions herein and in the other Loan documents required to be performed and observed by Borrower, and (ii) the Lenders shall have no further obligation to make any further disbursements of the Loan to or for the benefit of Borrower under the provisions of the Loan Agreement, then Administrative Agent shall execute and deliver to Borrower such instruments as may be reasonably requested by Borrower which are sufficient to release this Mortgage.

NOTWITHSTANDING any provision hereof to the contrary, this Mortgage shall secure all future advances made in connection with the Mortgaged Property within ten (10) years from the date hereof, whether such advances are obligatory or are made at the option of Administrative Agent pursuant to the Lenders' rights under the Loan Documents and whether or not such advances are evidenced by the Notes, to the same extent as if such advances were made on the date of execution and delivery hereof, with interest on such future advances at the Default

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Rate (as defined in the Notes); provided that the aggregate outstanding balance of the Debt shall at no time exceed two hundred percent (200%) of the stated principal amount of the Notes. All covenants, warranties and agreements contained in this Mortgage shall be equally applicable to future advances.

## BORROWER FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Representations of Borrower. Borrower hereby represents and warrants to the Lenders as follows:

(a) Borrower (i) is a limited liability company duly formed and validly existing under the laws of the State of Illinois and has complied with all conditions prerequisite to its doing business in the State of Illinois, (ii) has the power and authority to own its properties and to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; and (iv) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(b) Borrower has good and marketable title to an indefeasible fee simple estate in the Premises, subject to no liens, charges or encumbrances, other than the Permitted Encumbrances; that it has good, right and lawful authority to mortgage the Mortgaged Property in the manner and form herein provided; that this Mortgage is and shall remain a valid and enforceable lien on the Mortgaged Property subject only to the Permitted Encumbrances; that Borrower and its successors and assigns shall defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the Land.

(c) As of the date hereof, there has been no material change in the financial condition of Borrower or any guarantor of the Notes from that set forth in Borrower's most recent financial statement, and, to the best of Borrower's knowledge, the financial statements of such guarantor, and the financial information contained therein was true and correct on the date the statements were issued and there has been no material adverse change as of the date hereof.

(d) There are no suits or proceedings pending, or to the knowledge of Borrower, threatened against or affecting Borrower, which, if adversely determined, would have a material adverse effect on the financial condition or business of Borrower or its ability to perform its obligations under this Mortgage or any of the other Loan Documents executed by it, and there are no proceedings by or before any court, governmental commission, board, bureau, or other administrative agency pending or, to the knowledge of Borrower, threatened against Borrower, which, if adversely determined, would have a material adverse effect on the financial condition or business of Borrower or its ability to perform its obligations under this Mortgage or any of the other Loan Documents executed by it.

(e) To Borrower's Knowledge (as defined in the Loan Agreement), the Mortgaged Premises complies with all requirements of law, municipal ordinances and restrictions and covenants of record with respect to the Mortgaged Premises and the use thereof.

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(f) Borrower has and shall maintain title to the Collateral (as hereinafter defined), including any additions or replacements thereto, free of all security interests, liens and encumbrances, other than the security interest hereunder.

(g) No person who owns twenty percent (20%) or more of the equity interests in Borrower, or otherwise controls Borrower or any of its subsidiaries, is listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, and the proceeds of the Loan will not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

(h) Borrower is able to pay its debts as such debts become due, and has capital sufficient to carry on its present businesses and transactions and all businesses and transactions in which it is about to engage. Borrower (i) is not bankrupt or insolvent, (ii) has not made an assignment for the benefit of its creditors, (iii) has not had a trustee or receiver appointed, (iv) has not had any bankruptcy, reorganization or insolvency proceedings instituted by or against it, or (v) shall not be rendered insolvent by its execution, delivery or performance of the Loan Documents or by the transactions contemplated thereunder.

## 2. Borrower's Covenants

(a) Payment of Debt. Borrower shall, prior to the expiration of any grace period: (i) pay the Debt when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by Borrower as provided in the Notes, the Loan Agreement, this Mortgage and the other Loan Documents.

(b) Repair/Maintenance. Borrower shall (i) promptly repair, restore, replace or rebuild any portion of the Premises which may be damaged or destroyed whether or not Insurance Proceeds (as hereinafter defined) are available or sufficient for that purpose; (ii) keep the Premises in good condition and repair, free from waste; (iii) pay all operating costs and expenses of the Premises when due; (iv) comply with all legal requirements applicable to all or any portion of the Premises, or the use and occupancy, thereof (subject to the right of Borrower to contest the enforceability or applicability of any such legal requirements in good faith, diligently and at its expense by appropriate proceedings which shall not subject Borrower, Administrative Agent and/or the Lenders to any risk of civil or criminal liability and which shall operate during the pendency thereof to prevent the imposition or foreclosure of any lien upon, or any interference with the availability, use or occupancy of, the Mortgaged Property or any part thereof), and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Premises or the use and occupancy thereof; (v) refrain from any action, and correct any condition known to Borrower, which would materially increase the risk of fire or other hazard to the Premises or any portion thereof; and (vi) cause the Premises to be managed in a competent and professional manner.

(c) Alteration of Mortgaged Property. Without the prior written consent of Administrative Agent, Borrower shall not cause, suffer or permit (i) any material alteration of the



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Premises, except as required by any applicable legal requirement or as otherwise contemplated by the Loan Agreement; (ii) any change in the zoning classification or intended use or occupancy of the Premises, including without limitation any change which would increase any fire or other hazard; (iii) any change in the identity of Borrower or the person or entity responsible for managing the Premises; or (iv) any modification of the licenses, permits, privileges, franchises, covenants, conditions or declarations of use applicable to the Premises, except as required to operate the Premises in the manner required hereunder.

(d) Continuing Existence. Borrower, without the prior written consent of Administrative Agent, shall not (i) permit itself to be dissolved or its existence terminated, or (ii) amend or modify its organizational documents if such amendment or modification could have a material adverse effect on (A) Borrower's ability to perform its obligations under any of the Loan Documents, or (B) the validity or priority of Administrative Agent's liens or security interests under the Loan Documents.

(e) Compliance with Laws. Borrower shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Borrower or to the Premises or any part thereof.

(f) Operating and Reserve Accounts. Borrower shall maintain the operating, escrow, reserve and other accounts, if any, for the Premises with Administrative Agent and pledge the same to Administrative Agent, for the benefit of the Lenders as additional security for the Loan.

### 3. Liens, Contest and Defense of Title.

(a) Borrower shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder, whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Mortgage, including liens for labor or materials with respect to the Premises ("Mechanic's Liens").

(b) Notwithstanding paragraph (a) of this Section, Borrower may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Mortgage; and (ii) within ten (10) days after Borrower has been notified of the filing of any such Mechanic's Liens, Borrower shall have notified Administrative Agent in writing of Borrower's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to Administrative Agent, insuring Administrative Agent and/or the Lenders against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement Borrower may deposit and keep on deposit with Administrative Agent (or such depository as may be designated by Administrative Agent) a sum of money sufficient, in the judgment of Administrative Agent, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by Administrative

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Agent in its sole discretion to protect the priority of this Mortgage. In case Borrower shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then Administrative Agent may, at its option, apply any money and liquidate any securities then on deposit with Administrative Agent (or other depository designated by Administrative Agent) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Administrative Agent's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then Borrower shall forthwith, upon demand, deposit with Administrative Agent for the benefit of the Lenders (or other depository designated by Administrative Agent) the sum which shall (in Administrative Agent's reasonable judgment, when added to the funds then on deposit with Administrative Agent) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Administrative Agent). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist) when Administrative Agent has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with Administrative Agent (or other depository) under this Section 3(b) shall be paid to Borrower, provided that no Event of Default shall then exist.

(c) If the lien and security interest of Administrative Agent in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, Borrower shall immediately notify Administrative Agent and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

#### 4. Payment and Contest of Taxes.

(a) Borrower shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Mortgaged Property, or any part thereof, or any interest therein, or any income or revenue therefrom, or any obligation or instrument secured hereby, and all installments thereof (collectively, the "Taxes"), on or before the date such Taxes are due; and Borrower shall discharge any claim or lien relating to Taxes upon the Premises. Borrower shall provide Administrative Agent with copies of paid receipts for Taxes, if requested by Administrative Agent, within ten (10) days after being requested to do so by Administrative Agent.

(b) Notwithstanding paragraph (a) of this Section, Borrower may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, *provided* that: (i) no Event of Default has occurred; (ii) such proceeding shall stay the collection of the applicable Taxes from Borrower and from the Premises or Borrower shall have paid all of the applicable Taxes under protest, (iii) such proceeding shall be permitted under and

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be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (iv) neither the Premises nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost so long as the contest is being pursued, and (v) Borrower shall have deposited with Administrative Agent adequate reserves for the payment of the applicable Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the applicable Taxes under protest, or Borrower shall have furnished such other security as may be accepted by Administrative Agent, in its sole and absolute discretion, to insure the payment of any contested Taxes, together with all interest and penalties thereon. If Borrower fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds as hereinabove provided, Administrative Agent may, at its option, liquidate any securities and apply the monies then on deposit with Administrative Agent (or other depository), in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon according to any written bill, notice or statement, without inquiry as to the amount, validity or enforceability thereof. If the amount of money and any such security so deposited shall (in Administrative Agent's reasonable judgment) at any time be insufficient for the payment in full of such Taxes, together with all penalties and interest which are or might become due thereon, Borrower shall forthwith, upon demand, either deposit with Administrative Agent (or other depository designated by Administrative Agent) a sum (or such other security as shall be reasonably satisfactory to Administrative Agent) which when added to the funds then on deposit, shall (in Administrative Agent's reasonable judgment) be sufficient to make such payment in full, or, if Administrative Agent (or other depository) has applied funds so deposited on account of such Taxes, restore such deposit to an amount satisfactory to Administrative Agent. After final disposition of such contest and upon Borrower's written request and delivery to Administrative Agent of an official bill for such Taxes, Administrative Agent (or other depository) shall liquidate any securities and apply the monies, if any, then on deposit under this Section 4 to the payment of such Taxes or that part thereof then unpaid and the balance, if any, in excess of the amount required to be on deposit with Administrative Agent (or other depository) under Section 26 hereof shall be refunded to Borrower after such final disposition, provided that no Event of Default shall then exist.

## 5. Change in Tax Laws.

(a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Administrative Agent, Borrower or the Mortgaged Property, any tax is imposed or becomes due in respect of the Notes or this Mortgage (excluding income, excise or franchise taxes imposed upon Administrative Agent and/or the Lenders, except as provided in Section 5(c) below), or any liens on the Mortgaged Property created thereby, then Borrower shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Mortgaged Property for the purpose of taxation by creating any lien thereon, or imposing upon Administrative Agent and/or the Lenders any liability for the payment of all or any part of the Taxes required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of Administrative Agent and/or the Lenders in the Mortgaged Property, or the manner of collection of Taxes so as to adversely affect this Mortgage, the Debt, or



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Administrative Agent, then, and in any such event, Borrower, upon demand by Administrative Agent, shall pay such Taxes, or reimburse Administrative Agent therefor on demand, unless Administrative Agent determines, in Administrative Agent's sole judgment, that such payment or reimbursement by Borrower is unlawful or that the payment might, in Administrative Agent's judgment, constitute usury or render the Debt wholly or partially usurious; in which event Administrative Agent may elect to declare the Debt to be due and payable within the lesser of (i) thirty (30) days after written notice, or (ii) such shorter period as may be required to ensure compliance by Administrative Agent and/or the Lenders with applicable law.

(c) Nothing contained herein shall require Borrower to pay any income, franchise or excise tax imposed upon Administrative Agent and/or the Lenders, excepting only such income, franchise or excise tax which may be levied against the income of Administrative Agent and/or the Lenders as a complete or partial substitute for Taxes required to be paid by Borrower hereunder.

6. Insurance Coverage. For so long as this Mortgage is in effect, Borrower shall continuously maintain insurance in accordance with the following provisions:

(a) Borrower shall obtain and maintain at all times during the term of the Loan the insurance required by Administrative Agent pursuant to Exhibit B attached hereto. In addition, Borrower shall cause Administrative Agent, on behalf of the Lenders to be named as a named insured under the insurance policies required by Administrative Agent and Administrative Agent shall be identified in each policy as follows: MB Financial Bank, its successors and/or assigns as their respective interests may appear. Borrower shall provide Administrative Agent with evidence of all such insurance required hereunder.

(b) The policies of insurance to be obtained and maintained by Borrower under the provisions of this Mortgage shall be issued by responsible insurance carriers with a Best's rating of no less than A/VII, licensed to do business in the State of Illinois, who are acceptable to Administrative Agent and shall be in such form and with such endorsements (including a mortgagee clause in favor of Administrative Agent), waivers and deductibles (in no event to exceed Ten Thousand Dollars (\$10,000.00) as Administrative Agent shall designate or approve. Without limitation on the foregoing:

(i) All policies shall name Borrower as the insured, and (with the exception of policies for workmen's compensation insurance) shall name Administrative Agent, on behalf of the Lenders as mortgagee and as an additional insured (under a standard non-contributing mortgagee protection clause, in form reasonably satisfactory to Administrative Agent, attached to such policy or policies whenever applicable, and providing, among other matters, that all insurance proceeds shall be paid to Administrative Agent on behalf of the Lenders).

(ii) All policies shall contain: (1) the agreement of the insurer to give Administrative Agent at least thirty (30) days' written notice prior to cancellation or expiration of or change in such policies, or any of them; (2) a waiver of subrogation rights against Administrative Agent and, if available Borrower; (3) an agreement that such policies are primary and non-contributing with any insurance that may be carried by



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Administrative Agent; (4) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy; and (5) if obtainable, a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained. As of the date hereof, and subject to any changes in such requirements which Administrative Agent may, in its discretion, make from time to time pursuant to its rights under this Section 6, each policy of property insurance hereunder shall contain a lender's loss payable endorsement, lender clause, or other non-contributory mortgagee clause of similar form and substance acceptable to Administrative Agent in favor of Administrative Agent, on behalf of the Lenders as a first mortgagee.

(c) Concurrently herewith, Borrower shall deliver to Administrative Agent original policies or certificates with premiums prepaid evidencing the insurance required hereunder. Borrower shall procure and pay for renewals of such insurance (or shall cause the procurement and payment) from time to time before the expiration thereof, and Borrower shall deliver to Administrative Agent such original renewal policies or certificates with premiums prepaid at least thirty (30) days before the expiration of any existing policy.

(d) Borrower, for itself, and on behalf of its insurers, hereby releases and waives any right to recover against Administrative Agent and/or the Lenders on any liability for: damages for injury to or death of persons; any loss or damage to property, including the property of any occupant of the Premises; any loss or damage to buildings or other improvements comprising the Premises; any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is or would be covered by the insurance required to be carried hereunder by Borrower, or is otherwise insured; or claims arising by reason of any of the foregoing, except to the extent caused solely by the active gross negligence of Administrative Agent and/or the Lenders, respectively.

(e) Administrative Agent and/or the Lenders shall not, by reason of accepting, rejecting, obtaining or failing to obtain insurance, incur any liability for (i) the existence, non-existence, form, amount or legal sufficiency thereof, (ii) the solvency or insolvency of any insurer, or (iii) the payment of losses. All insurance required hereunder or carried by Borrower shall be procured at Borrower's sole cost and expense. Borrower shall deliver to Administrative Agent receipts satisfactory to Administrative Agent evidencing full prepayment of the premiums therefor, except to the extent Lender makes payments with Borrower's deposits under Section 26 hereof (for the periods and payments so covered by such payments). In the event of foreclosure on, or other transfer of title in lieu of foreclosure of, the Premises, all of Borrower's interest in and to any and all insurance policies in force shall pass to Administrative Agent, or the transferee or purchaser as the case may be, and Administrative Agent is hereby irrevocably authorized to assign in Borrower's name to such purchaser or transferee all such policies, which may be amended or rewritten to show the interest of such purchaser or transferee.

(f) Borrower is hereby notified pursuant to the Illinois Collateral Protection Act (815 ILCS 180/1 et. seq.) that unless Borrower provides Administrative Agent with evidence of the insurance coverage required by this Mortgage, Administrative Agent may purchase the required insurance at Borrower's expense to protect the Lenders' interest in the Premises. This insurance

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may, but need not, protect Borrower's interests. The coverage that Administrative Agent purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Premises. Borrower may later cancel any insurance purchased by Administrative Agent, but only after providing Administrative Agent with evidence that Borrower has obtained insurance as required by this Mortgage. If Administrative Agent purchases insurance for the Premises, Borrower will be responsible for the costs of that insurance, including interest at the Default Rate and any other charges Administrative Agent may impose in connection with the placement of the insurance until the effective date of the cancellation or the expiration of the insurance. The costs of the insurance shall be added to Borrower's total outstanding balance or obligation and shall constitute additional Debt. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own. The Borrower shall pay to the Lender on demand any premiums so paid with interest thereon at the Default Rate set forth in the Notes, from the time of the advance for such payment by the Administrative Agent, and said advance and interest shall be part of the Debt.

(g) Approval by Administrative Agent of any policies of insurance ("Policies") shall not be deemed a representation by Administrative Agent and/or the Lenders as to the adequacy of coverage of such Policies or the solvency of the insurer.

## 7. Casualty Loss; Proceeds of Insurance.

(a) Borrower will give Administrative Agent prompt written notice of any loss or damage to the Premises, or any part thereof, by fire or other casualty.

(b) In case of loss or damage covered by any one of the Insurance Policies in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "Threshold Amount"), Administrative Agent is hereby authorized to settle and adjust any claim under such Insurance Policies (and after the entry of a decree of foreclosure, or a sale or transfer pursuant thereto or in lieu thereof, the decree creditor or such purchaser or transferee, as the case may be, are hereby authorized to settle and adjust any claim under such Insurance Policies) upon consultation with, but without requiring the consent of, Borrower; and Administrative Agent, on behalf of the Lenders shall, and is hereby authorized to, collect and receipt for any and all proceeds payable under such Insurance Policies in connection with any such loss (collectively, the "Insurance Proceeds"). Borrower hereby irrevocably appoints Administrative Agent, on behalf of the Lenders as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment (i) of one hundred percent (100%) of all such losses (if such loss exceeds said amount) directly to Administrative Agent, on behalf of the Lenders alone, and (ii) of one hundred percent (100%) of all such losses (if such loss is less than or equal to said amount) directly to Borrower alone, and in no case to Borrower and Administrative Agent jointly. All reasonable costs and expenses incurred by Administrative Agent in the adjustment and collection of any such Insurance Proceeds (including without limitation reasonable attorneys' fees and expenses) shall be so much additional Debt, and shall be reimbursed to Administrative Agent upon demand or may be paid and deducted by Administrative Agent from such Insurance Proceeds prior to any other application thereof. Administrative Agent and/or the Lenders shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure,

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other than the gross negligence or willful misconduct of Administrative Agent and/or the Lenders.

(c) Net Insurance Proceeds received by Administrative Agent, on behalf of the Lenders under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Mortgaged Property or any part thereof shall be applied by Administrative Agent on behalf of the Lenders at its option as and for a prepayment on the Notes, without a prepayment fee (whether or not the same is then due or otherwise adequately secured), or shall be disbursed for restoration of such improvements ("Restoration"), in which event Administrative Agent shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Notes. If Administrative Agent elects to permit the use of Insurance Proceeds to restore such improvements it may do all necessary acts to accomplish that purpose, including advancing additional funds and all such additional funds shall constitute part of the Debt. If Administrative Agent elects to make the Insurance Proceeds available to Borrower for the purpose of effecting the Restoration, or, following an Event of Default, elects to restore such improvements, any excess of Insurance Proceeds above the amount necessary to complete the Restoration shall be applied as and for a prepayment on the Notes, without a prepayment fee or premium. No interest shall be payable to Borrower upon Insurance Proceeds held by Administrative Agent.

(d) Notwithstanding the provisions of Section 7(c) above, Administrative Agent agrees to allow the Insurance Proceeds to be disbursed for Restoration provided: (i) no Event of Default, and no default with which the passage of time or giving of notice would constitute and Event of Default, shall have occurred; (ii) Administrative Agent shall be satisfied in its sole and absolute discretion, that by expenditure of the Insurance Proceeds hereunder the Premises damaged or destroyed shall be fully restored within a reasonable period of time to the condition and value contemplated by this Mortgage and the Restoration Plans (as hereinafter defined), and all payments required under the Loan will continue to be paid as and when the same become due and payable; (iii) in Administrative Agent's good faith judgment, such work of repair and restoration can be completed in the ordinary course of business not later than the earlier of (A) six (6) months prior to the Maturity Date; (B) the outside date, if any, under any Lease or any federal, state, county, municipal or other governmental statute, law, rule, order, regulation, ordinance, judgment, decree or injunction, or any permit, license, covenant, agreement, restriction or encumbrance; (iv) no Lease may be terminated as a result of the casualty or other event resulting in the claim for payment of such Insurance Proceeds; (v) the Insurance Proceeds do not exceed the Threshold Amount; (vi) Administrative Agent shall have reviewed and approved Borrower's plans and specifications for the repair and restoration of the Mortgaged Property involving costs in excess of the Threshold Amount (the "Restoration Plans"), Borrower's architect and any general contractors, subcontractors and material suppliers employed to perform such work; (vii) if so required by Administrative Agent in its sole and absolute discretion, all general contractors, all major subcontractors and material suppliers shall have supplied one hundred percent (100%) performance and completion bonds; (viii) if the net Insurance Proceeds available are insufficient for payment of the full cost of restoration or repair and the payments under the Loan during the completion period, as estimated by Administrative Agent, then Borrower shall have deposited with Administrative Agent sufficient additional funds to insure payment of all such costs, or made arrangements acceptable to Administrative Agent



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for such sufficient additional funds; (ix) rent loss or business interruption insurance is available to cover the full amount of any loss of income from the Premises during its repair and restoration; (x) Borrower shall provide evidence of the implementation of builder's risk coverage for the Premises with coverage and in such amounts as Administrative Agent shall request and which otherwise complies with the insurance requirements set forth in Section 6 hereof; and (xi) Borrower shall have satisfied such other conditions as Administrative Agent may in good faith determine to be appropriate.

(e) So long as any Debt shall be outstanding and unpaid, and whether or not Insurance Proceeds are available or sufficient therefor, Borrower shall promptly commence and complete, or cause to be commenced and completed, with all reasonable diligence, the Restoration of the Premises as nearly as possible to the same value, condition and character which existed immediately prior to such loss or damage in accordance with the Restoration Plans and in compliance with all legal requirements. Any Restoration shall be effected in accordance with procedures to be first submitted to and approved by Administrative Agent in accordance with Section 9 hereof. Borrower shall pay all costs of such Restoration to the extent Insurance Proceeds are not made available or are insufficient.

## 8. Condemnation and Eminent Domain.

(a) Any and all awards (the "Awards") in excess of the Threshold Amount heretofore or hereafter made or to be made to Borrower (or any subsequent owner of the Premises, or any part thereof) by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by Borrower to Administrative Agent for the benefit of the Lenders, which Awards Administrative Agent is hereby authorized to collect and receive from the condemnation authorities, and Administrative Agent is hereby authorized to appear in and prosecute, in the name of and on behalf of Borrower, any action or proceeding to enforce any such cause of action in which an award in excess of the Threshold Amount is sought and to make any compromise or settlement in connection therewith and to give appropriate receipts and acquittance therefor in the name and in behalf of Borrower. Borrower shall give Administrative Agent immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises and shall deliver to Administrative Agent copies of any and all papers served in connection with any such proceedings. All reasonable costs and expenses incurred by Administrative Agent, for the benefit of the Lenders in the adjustment and collection of any such Awards (including without limitation reasonable attorneys' fees and expenses) shall be so much additional Debt, and shall be reimbursed to Administrative Agent, on behalf of the Lenders from any Award prior to any other application thereof. Borrower further agrees to make, execute and deliver to Administrative Agent, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever (other than Permitted Encumbrances), any and all further assignments and other instruments deemed necessary by Administrative Agent for the purpose of validly and sufficiently assigning all Awards in excess of the Threshold Amount and other compensation heretofore and hereafter made to Borrower for any permanent taking, under any such proceeding.



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(b) The proceeds of any Award received by Administrative Agent, on behalf of the Lenders under the provisions of this Mortgage or any instrument supplemental hereto shall be applied by Administrative Agent at its option as and for a prepayment of the Debt, without a prepayment fee (whether or not the same is then due or otherwise adequately secured), or shall be disbursed for Restoration of the Premises, in which event Administrative Agent shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the Debt. If Administrative Agent elects to permit the use of the proceeds of an Award to restore such improvements it may do all necessary acts to accomplish that purpose, including advancing additional funds, all such additional funds to constitute part of the Debt. If Administrative Agent elects to make the proceeds of an Award available to Borrower for the purpose of effecting the Restoration, or, following an Event of Default, elects to restore such improvements, any excess of such proceeds above the amount necessary to complete the Restoration shall be applied as and for a prepayment of the Debt, without a prepayment fee or premium. No interest shall be payable to Borrower upon such proceeds held by Administrative Agent.

(c) Notwithstanding the provisions of Section 8(b) above, Administrative Agent agrees to allow the Award to be disbursed for Restoration provided: (i) all conditions to the use of casualty proceeds under Section 7(d) have been satisfied, and (ii) the condemnation, in the judgment of Administrative Agent, shall have no material adverse effect on the operation or value of the Premises remaining after the condemnation is completed, and (iii) Borrower shall have satisfied such other conditions as Administrative Agent may in good faith determine to be appropriate.

(d) So long as any Debt shall be outstanding and unpaid, and whether or not Awards are available or sufficient therefor, Borrower shall promptly commence and complete, or cause to be commenced and completed, with all reasonable diligence the Restoration of the portion of the Premises not so taken as nearly as possible to the same value, condition and character, which existed immediately prior to such taking in compliance with all legal requirements. Any Restoration of the Premises involving costs in excess of the Threshold Amount shall be effected in accordance with Restoration Plans to be first submitted to and approved by Administrative Agent as provided in Section 9 hereof. Borrower shall pay all costs of such Restoration to the extent the Award is not made available or is insufficient.

## 9. Disbursement of Insurance Proceeds and Awards.

(a) All Insurance Proceeds and/or Awards received by Administrative Agent, on behalf of the Lenders as provided in Section 7 or Section 8 hereof shall, after payment or reimbursement therefrom of all reasonable costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by Administrative Agent in the adjustment and collection thereof (collectively, the "Net Proceeds"), shall be deposited with Administrative Agent, or such other depository as may be designated by Administrative Agent, and applied as provided in this Section.

(b) Administrative Agent may elect to apply the Net Proceeds to prepayment of the Debt, whether then due or not. If the Debt is not prepaid in full, then the Net Proceeds shall be applied to the installments of principal and interest in the inverse order of maturity.

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(c) All Net Proceeds which are not applied to the payment of the Debt shall be applied to fund the payment of the costs, fees and expenses incurred for the Restoration of the Premises as required under Section 7 or Section 8 hereof and such Net Proceeds shall be disbursed through the title company which has insured the lien of the Mortgage to complete the Restoration; provided that Administrative Agent shall receive the following:

(i) Restoration Plans (unless the costs involved in such Restoration shall not exceed the Threshold Amount, which shall be subject to the reasonable approval of Administrative Agent prior to the commencement of the Restoration.

(ii) Such architect's and engineer's certificates, waivers of lien, contractor's sworn statements, payment and performance bonds (if applicable), title insurance endorsements, plats of survey, opinions of counsel and such other evidences of cost, payment and performance as Administrative Agent may reasonably require and approve.

(d) If Borrower shall fail to commence Restoration within thirty (30) days after the settlement of the claim involving loss or damage to the Premises, and diligently proceed to complete Restoration in accordance with the Restoration Plans and Applicable Laws (as defined in the Loan Agreement), or if any other Event of Default shall occur hereunder at any time (whether before or after the commencement of such Restoration), all or any portion of the Debt may be declared to be immediately due and payable and such Net Proceeds, or any portion thereof, then held, or subsequently received, by Administrative Agent or other depository hereunder may be applied, at the option and in the sole discretion of Administrative Agent, to the payment or prepayment of the Debt in whole or in part, or to the payment and performance of such obligations of Borrower as may then be in default hereunder.

(e) Any surplus which may remain out of such Net Proceeds after payment of all costs, fees and expenses of such Restoration shall be applied to prepayment of the Debt, without the payment of a prepayment fee or prepayment premium.

## 10. Administrative Agent's Performance of Borrower's Obligations.

(a) Upon the occurrence of an Event of Default hereunder, Administrative Agent, on behalf of the Lenders may, but without any obligation to do so, upon simultaneous notice to Borrower, make any payment or perform any act which Borrower is required to make or perform hereunder or under any other Loan Document (whether or not Borrower is personally liable therefor) in any form and lawful manner deemed expedient to Administrative Agent, including without limitation, the right to enter into possession of the Premises, or any portion thereof, and to take any action (including without limitation the release of any information regarding the Premises, Borrower and the obligations secured hereby) which Administrative Agent deems necessary or desirable in connection therewith, all at the sole cost and expense of Borrower. Administrative Agent, in addition to any rights or powers granted or conferred hereunder but without any obligation to do so, may complete construction of, rent, operate, and manage the Premises, or any part thereof, including payment of management fees and other operating costs and expenses, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for their intended purposes. All monies paid, and all reasonable expenses paid or incurred in connection therewith, including but not limited to reasonable costs of surveys,

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evidence of title, court costs and attorneys' fees and expenses and other monies advanced by Administrative Agent to protect the Premises and the lien hereof, to complete construction of, rent, operate and manage the Premises or to pay any such operating costs and expenses thereof or to keep the Premises operational and usable for their intended purposes shall be so much additional Debt, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate.

(b) Administrative Agent, in making any payment, may do so according to any written bill, notice, statement or estimate, without inquiry into the amount, validity or enforceability thereof.

(c) Nothing contained herein shall be construed to require Administrative Agent and/or the Lenders to advance or expend monies for any purpose mentioned herein, or for any other purposes.

## 11. Security Agreement.

(a) Grant of Security Interest. Borrower hereby grants to Administrative Agent, on behalf of the Lenders a security interest in the Personal Property to secure the Debt. This Mortgage constitutes a security agreement with respect to all Personal Property in which Administrative Agent, on behalf of the Lenders is granted a security interest hereunder, and Administrative Agent shall have all of the rights and remedies of a secured party under the Code as well as all other rights and remedies available at law or in equity.

(b) Perfection. Borrower hereby consents to any instrument that may be requested by Administrative Agent to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Mortgage or the interest of Administrative Agent, on behalf of the Lenders in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Borrower shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all reasonable expenses, including without limitation, reasonable attorneys' fees and costs (of both in house and outside counsel), incurred by Administrative Agent in connection with the preparation and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Borrower hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Borrower hereby irrevocably constitutes and appoints Administrative Agent, on behalf of the Lenders as the attorney-in-fact of Borrower, to file with the appropriate filing office any such instruments. In addition, Borrower hereby authorizes Administrative Agent to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Borrower.

(c) Place of Business. Borrower maintains its chief executive office as set forth as the address of Borrower in Section 30 below, and Borrower will notify Administrative Agent in writing of any change in its place of business within five (5) days of such change.

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(d) Fixture Filing. This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code and will be recorded as a "fixture filing" in accordance with the Code.

(e) Representations and Warranties. Borrower represents and warrants that: (i) Borrower is the record owner of the Mortgaged Property; (ii) Borrower's chief executive office is located in the State of Illinois; (iii) Borrower's state of organization is the State of Illinois; (iv) Borrower's exact legal name is as set forth on Page 1 of this Mortgage; (v) Borrower's organizational identification number is 00137073 (vi) Borrower is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof; (vii) the Personal Property will not be removed from the Mortgaged Premises without the consent of Administrative Agent; and (viii) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto. The following addresses are the mailing addresses of the Borrower, as debtor under the Code, and the Administrative Agent, as secured party under the Code, respectively:

Mortgagor: c/o Smithfield Properties, LLC  
126 West Chicago Avenue  
Chicago, Illinois 60654

Administrative Agent: MB Financial Bank  
363 West Ontario  
2nd Floor  
Chicago, Illinois 60654

12. Restrictions on Transfer. For the purpose of protecting Administrative Agent's security, and keeping the Premises free from subordinate financing liens, Borrower agrees that it, the members of Borrower, and the members, partners or stockholders of any entity controlling, directly or indirectly, Borrower, will not, other than with respect to a Permitted Transfer (as defined in the Loan Agreement):

(a) sell, assign, transfer, hypothecate, grant a security interest in or convey title to (i) the Premises or any part thereof, or (ii) any membership interest in Borrower, or (iii) any membership interest, partnership interest or stock in any entity controlling, directly or indirectly, Borrower;

(b) obtain any financing, all or a part of which will be secured by (i) the Premises, or (ii) any membership interest in Borrower, or (iii) any membership interest, partnership interest or stock in any entity controlling, directly or indirectly, Borrower; or

(c) convert Borrower from one type of legal entity into another type of legal entity; without, in each instance, Administrative Agent's prior written consent. Any violation of this Section 12 shall be deemed a "Prohibited Transfer".

13. Events of Default. Any one or more of the following events shall constitute an "Event of Default" under this Mortgage:



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(a) If Borrower shall fail (i) to make any payment of principal or interest under the Notes (within five (5) Business Days of the date when due except upon maturity or acceleration) or (ii) to make any other payment under the Loan Documents within five (5) days of the date when due or, if no date is stated, five (5) days after demand (or such shorter period as may be expressly provided for herein or therein); or

(b) If Borrower shall fail to maintain the insurance coverages in effect as required in Section 6 hereof; or

(c) If a Prohibited Transfer shall occur; or

(d) If any representation or warranty made by Borrower or any member thereof or any guarantor of the Notes pursuant to or in connection with this Mortgage shall prove to be untrue or incorrect in any material respect; provided, however, that if such inaccuracy or untruth (i) was not made with respect to the financial statements or other information delivered to Lender concerning Guarantor and (ii) by its nature can be cured and, then so long as the continued operation and safety of the Mortgaged Property, and the priority, validity and enforceability of the liens created by this Mortgage or any of the other Loan Documents and the value of the Mortgaged Property is not impaired, threatened or jeopardized, then Borrower shall have a period ("Representation and Warranty Cure Period") of ten (10) days after Borrower receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Representation and Warranty Cure Period; or

(e) Borrower fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower contained in this Mortgage and not specifically referred to elsewhere in this Section 13; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by this Mortgage or any of the other Loan Documents and the value of the Premises are not impaired, threatened or jeopardized, then Borrower shall have a period ("Cure Period") of thirty (30) days after Borrower obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period (provided, however, such period shall be limited to ten (10) days if such failure can be cured by the payment of money), provided further that if Borrower commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate ; or

(f) If any Event of Default occurs under any other Loan Document.

14. Remedies. Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Borrower from complying with the terms of this instrument), and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

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(a) Acceleration. Administrative Agent, on behalf of the Lenders may declare the outstanding principal balance of the Notes and all unpaid indebtedness of Borrower hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Administrative Agent, on behalf of the Lenders shall, with respect to the Collateral, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Borrower at its address set forth in Section 30 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Collateral, may be sold as a single parcel if the Administrative Agent elects. The Borrower hereby agrees that if the Administrative Agent demands or attempts to take possession of the Collateral or any portion thereof in exercise of its rights and remedies hereunder, the Borrower will promptly turn over and deliver possession thereof to the Administrative Agent, on behalf of the Lenders, and the Borrower authorizes, to the extent the Borrower may now or hereafter lawfully grant such authority, the Administrative Agent, its employees and agents, and potential bidders or purchasers to enter upon the Premises of any other office, building or property where the Collateral or any portion thereof may at the time be located (or believed to be located) and the Administrative Agent may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Collateral or any portion thereof; (iii) maintain, repair or store the Collateral or any portion thereof; (iv) view, inspect and prepare the Collateral or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Collateral or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Collateral, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional Debt and shall be payable upon demand with interest at the Default Rate.

(c) Foreclosure. Administrative Agent, on behalf of the Lenders may proceed to protect and enforce the rights of the Lenders hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Debt in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as from time to time amended (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of the Lenders for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Administrative Agent, on behalf of the Lenders may deem reasonably necessary either

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to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Administrative Agent in any litigation or proceedings affecting this Mortgage, the Notes or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

(d) Appointment of Receiver. Administrative Agent, on behalf of the Lenders shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Mortgaged Property, be entitled to have a receiver appointed of all or any part of the Mortgaged Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Borrower or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Upon demand by Administrative Agent, Borrower shall surrender to Administrative Agent on behalf of the Lenders and Administrative Agent may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Administrative Agent, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Borrower relating thereto, and may exclude Borrower and any agents and servants thereof wholly therefrom and may, on behalf of Borrower, or in its own name as Administrative Agent, on behalf of the Lenders and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;



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(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage without Administrative Agent's prior written consent;

(iv) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Debt, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Administrative Agent, to insure and reinsure the Mortgaged Property and all risks incidental to Administrative Agent's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom;

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of taxes, premiums and other charges applicable to the Mortgaged Property, or in reduction of the Debt in such order and manner as Administrative Agent shall select, in its sole discretion; and

(vii) receive and collect the rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Borrower agrees to consent to a receiver if it is believed necessary or desirable by Administrative Agent to enforce its rights under this subsection. The collection of rents, issues, profits or revenues of the Mortgaged Property by the Administrative Agent shall in no way waive the right of the Administrative Agent to foreclose this Mortgage in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Administrative Agent a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Administrative Agent, on behalf of the Lenders hereunder or afforded by law, and may be exercised concurrently therewith



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or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Borrower promises to pay upon demand together with interest thereon at the Default Rate. Administrative Agent and/or the Lenders shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any rents actually received by Administrative Agent. Without taking possession of the Mortgaged Property, Administrative Agent may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all reasonable costs incurred in so doing shall constitute so much additional Debt payable upon demand with interest thereon at the Default Rate.

(f) Indemnity. Borrower hereby agrees to indemnify, defend, protect and hold harmless Administrative Agent and the Lenders and their employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, or lease of any of the Mortgaged Property, or any part thereof, or as a result of Administrative Agent and/or the Lenders seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property; provided, however, that the foregoing indemnity shall not extend to such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of Administrative Agent, the Lenders, and their employees, officers or agents.

## 15. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the inconsistent provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Administrative Agent and/or the Lenders any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Administrative Agent and/or the Lenders under the Act in the absence of said provision, Administrative Agent and the Lenders shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Administrative Agent to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Section 14(c) or Section 17 of this Mortgage, shall be added to the Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

16. Waiver of Right to Redeem - Waiver of Appraisal, Valuation, Etc. Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Moratorium Laws. Borrower for itself and all who may claim through or under it

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waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as Administrative Agent may determine in its sole discretion. Administrative Agent shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Administrative Agent so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Administrative Agent with the amount payable to Administrative Agent out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Debt, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Borrower, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Section 5/15-1601(b) of the Act, and (ii) any and all rights of reinstatement.

17. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of the Lenders for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as Administrative Agent may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable attorneys' fees, all of which expenditures shall become so much additional Debt which Borrower agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

18. Protective Advances.

(a) Advances, disbursements and expenditures made by Administrative Agent and/or the Lenders for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":

(i) all advances by Administrative Agent and/or the Lenders in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

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- (ii) payments by Administrative Agent and/or the Lenders of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property, as referred to in Section 5/15-1505 of the Act;
- (iii) advances by the Lenders in settlement or compromise of any claims asserted by claimants under any prior liens;
- (iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against the Administrative Agent and/or the Lenders for the enforcement of this Mortgage or arising from the interest of the Lenders hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;
- (v) Administrative Agent and/or the Lenders' fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;
- (vi) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;
- (vii) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act; and
- (viii) expenses incurred and expenditures made by Administrative Agent and/or the Lenders for any one or more of the following: (A) premiums for casualty and liability insurance paid by Administrative Agent and/or the Lenders whether or not Administrative Agent and/or the Lenders or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments required or deemed by Administrative Agent and/or the Lenders to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a

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member in any way affecting the Mortgaged Property; (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(b) All Protective Advances shall be so much additional Debt, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(c) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in the:

(i) determination of the amount of Debt at any time;

(ii) indebtedness found due and owing to the Lenders in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(iv) application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

19. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to Section 14(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Section 14(c) and Section 17 hereof; second, to all items, other than principal and interest evidenced by the Notes, which under the terms hereof constitute Debt with interest thereon as herein provided; third, to all unpaid interest on the Notes; fourth, to all unpaid principal on the Notes; fifth, to whomsoever shall be lawfully entitled to the same.

20. Rights Cumulative.

(a) Each right, power and remedy herein conferred upon Administrative Agent, for the benefit of Lenders is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by Administrative Agent.



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(b) By accepting payment of any sums secured by this Mortgage after the due date thereof, by accepting performance of any of Borrower's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of Borrower which Borrower was obligated but failed to perform or pay, Administrative Agent and/or the Lenders shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of Borrower's obligations under this Mortgage, the Notes, and all other Loan Documents. No waiver or modification of any of the terms of this Mortgage shall be binding on the Lenders unless set forth in writing signed by Administrative Agent and any such waiver by Administrative Agent, on behalf of the Lenders of any Event of Default by Borrower under this Mortgage shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If Administrative Agent, on behalf of the Lenders holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

(c) No act or omission by Administrative Agent and/or the Lenders shall release, discharge, modify, change or otherwise affect the liability of Borrower under the Notes, this Mortgage, or any of the other Loan Documents, or any other obligation of Borrower, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude Administrative Agent and/or the Lenders from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Mortgage or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by Administrative Agent. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Administrative Agent and/or the Lenders in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to Administrative Agent and/or the Lenders by this Mortgage is not required to be given.

## 21. Successors and Assigns; Assignment.

(a) This Mortgage and each and every provision hereof shall be binding upon Borrower and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of the Lenders and their successors and assigns.

(b) All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than Borrower, Administrative Agent may, without notice to Borrower, deal with such successor or successors in interest of Borrower with reference to this Mortgage and the Debt in the same manner as with Borrower without in any way releasing or discharging Borrower from its obligations hereunder. Borrower will give immediate written notice to Administrative Agent of any conveyance, transfer or

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change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 12 hereof.

(c) The rights and obligations of Borrower under this Mortgage may not be assigned and any purported assignment by Borrower shall be null and void. The Lenders shall have the right to sell, assign or transfer portions of its right, title and/or interest in and to this Mortgage and the other Loan Documents (including the sale of participation interests therein), without the consent or approval of Borrower, and Borrower agrees to cooperate in all respects with the Lenders in connection therewith, including, without limitation, the execution of all documents and instruments reasonably requested by Administrative Agent or such transferee provided that such documents and instruments do not materially adversely affect any of Borrower's duties or obligations under this Mortgage and the other Loan Documents.

## 22. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter; Corrective Documents.

(a) Borrower will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Administrative Agent shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto Administrative Agent, on behalf of the Lenders all property mortgaged hereby or property intended so to be, whether now owned by Borrower or hereafter acquired. Without limitation of the foregoing, Borrower will assign to Administrative Agent, on behalf of the Lenders, upon request, as further security for the Debt, its interest in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments reasonably satisfactory to Administrative Agent, but no such assignment shall be construed as a consent by Administrative Agent to any agreement, contract, license or permit or to impose upon Administrative Agent and/or the Lenders any obligations with respect thereto.

(b) From time to time, Borrower will furnish, within ten (10) days after request from Administrative Agent, a written and duly acknowledged statement of the amount due under the Notes and this Mortgage and whether any alleged offsets or defenses exist against the Debt.

(c) Borrower and Administrative Agent shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by Administrative Agent or Borrower, as the case may be, to correct such defect, error or omission.

23. Subrogation. If any part of the Debt is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then by advancing the monies to make such payment, the Lenders shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

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## 24. Governing Law.

(a) Substantial Relationship. The parties agree that the State of Illinois has a substantial relationship to the parties and to the underlying transactions embodied by the Loan Documents.

(b) Place of Delivery. Borrower agrees to furnish to Lender at Lender's office in Chicago, Illinois all further instruments, certifications and documents to be furnished hereunder, if any.

(c) Governing Law. This Mortgage and the obligations of Borrower hereunder that affect the Premises shall be governed by and interpreted and determined in accordance with the laws of the State of Illinois.

## 25. Business Loan.

(a) Borrower declares, represents, certifies and agrees that the proceeds of the Notes will be used solely for business purposes and that the loan is exempt from interest limitations pursuant to the provisions of 815 ILCS 205/4 and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

(b) All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under the provisions of any applicable law.

26. Escrow Deposits. If an Event of Default occurs and upon Administrative Agent's request, and without limiting the effect of Section 4, Section 5, and Section 6 hereof, Administrative Agent may require that Borrower pay to Administrative Agent, on behalf of Lenders on the first business day of each calendar month an amount equal to one-twelfth (1/12th) of what Administrative Agent estimates is necessary to pay, on an annualized basis, (1) all Taxes, and (2) all premiums for the insurance policies required under Section 6 hereof ("Premiums") and to enable Administrative Agent to pay same at least thirty (30) days before the Taxes would become delinquent and the Premiums are due, and, on demand, from time to time shall pay to Administrative Agent additional sums necessary to pay the Premiums and Taxes. No amounts so paid shall be deemed to be trust funds, but may be commingled with the general funds of Administrative Agent, and no interest shall be payable thereon. In the event that Borrower does not pay such sums for Premiums and Taxes, then Administrative Agent, on behalf of the Lenders may, but shall not be obligated to, pay such Premiums and Taxes and any money so paid by Administrative Agent, on behalf of the Lenders shall constitute additional Debt hereunder and shall be payable by Borrower to Administrative Agent, on behalf of the Lenders on demand with interest thereon from the date of disbursement by Administrative Agent at Default Rate until repaid to Administrative Agent, on behalf of the Lenders. If an Event of Default occurs, Administrative Agent shall have the right, at its election, to apply any amounts so held under this Section 26 against all or any part of the Debt, or in payment of the Premiums or Taxes for which the amounts were deposited. Borrower will furnish to Administrative Agent



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bills for Taxes and Premiums not less than thirty (30) days before Taxes become delinquent and such Premiums become due.

27. Assignment of Leases and Other Agreements Affecting the Mortgaged Property.

In order to further secure payment of the Debt and the observance, performance and discharge of Borrower's obligations under the Loan Documents, Borrower hereby assigns to Administrative Agent, on behalf of the Lenders all of Borrower's right, title, interest and estate in, to and under all of the Leases and in and to all of the Rents and Profits (defined as all rents, income, issues and profits arising from any Leases or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property now or hereafter made affecting the Mortgaged Property or any portion thereof), as more particularly described in that certain Assignment of Leases and Rents dated as of even herewith from Borrower to and for the benefit of the Lenders. Unless and until an Event of Default occurs, Borrower shall be entitled to collect the Rents and Profits (except as otherwise provided in this Mortgage) as and when they become due and payable. Neither these assignments nor Administrative Agent's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Mortgage to any of the rights of any tenant of all or any part of the Mortgaged Property, or to subject Administrative Agent and/or the Lenders to any liability to any such tenant for the performance of any obligations of Borrower under any such Lease unless and until Administrative Agent agrees to such subordination or assumes such liability by an appropriate written instrument.

28. Inspection of Premises and Records.

Administrative Agent and its representatives and agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times, after giving reasonable notice to Borrower, and access thereto, subject to the rights of tenants pursuant to Leases. Administrative Agent shall use reasonable efforts to avoid disturbing business operations on the Premises during such inspections. Borrower or Administrative Agent thereof shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises and permit Administrative Agent or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time on request at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon.

29. Environmental Matters.

Concurrently herewith, Borrower shall execute and deliver an Environmental Indemnity Agreement in form satisfactory to Administrative Agent (the "Environmental Indemnity Agreement"). The performance of the covenants, undertakings and obligations of the indemnitees under the Environmental Indemnity Agreement shall be secured by this Mortgage.

30. Notices.

All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, or (iv) upon receipt, if sent by facsimile, telex or telegram, addressed to the addresses set forth below in this Section or as such party may from time to time designate by written notice to the other parties. Either party by notice to the other in the manner



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provided herein may designate additional or different addresses for subsequent notices or communications:

To Administrative Agent: MB Financial Bank  
 363 West Ontario  
 2nd Floor  
 Chicago, Illinois 60654  
 Attention: Matthew Robertson  
 Telephone: (847) 653-1170  
 Fax: (847) 939-2620  
 Email: MTRobertson@mbfinancial.com

With copy to:

MB Financial Bank  
 800 West Madison Street  
 Chicago, Illinois 60607  
 Attention: Teresa Blancarte  
 Telephone: (312) 948-2829  
 Fax: 312-279-0175  
 Email: TBlancarte@mbfinancial.com

Quarles & Brady LLP  
 300 North LaSalle Street, Suite 4000  
 Chicago, Illinois 60654  
 Attn: Joel V. Sestito, Esq.  
 Fax: (312) 715-5155  
 Email: joel.sestito@quarles.com

To Borrower:

c/o Smithfield Properties, LLC  
 126 West Chicago Avenue  
 Chicago, Illinois 60654  
 Attn: W. Harris Smith  
 Email: wsmith@smith-field.com

With copy to:

c/o Smithfield Properties, LLC  
 126 West Chicago Avenue  
 Chicago, Illinois 60654  
 Attention: Lawrence M. Gritton, Esq.  
 E-mail: lgritton@smith-field.com

31. Releases.

(a) Upon payment in full of all sums due under the Notes and this Mortgage and the other of the Loan Documents, Administrative Agent, shall execute and deliver to Borrower a proper release of this Mortgage. Borrower shall be responsible for the recordation of such release and the payment of any recording and filing costs.

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(b) As provided in Section 11.8 of the Loan Agreement, Administrative Agent may, regardless of consideration, cause the release of any part of the Mortgaged Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Mortgaged Property not so released.

32. Indemnification by Borrower. Borrower shall protect and indemnify Administrative Agent and the Lenders from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against Administrative Agent and/or the Lenders or the members, partners, stockholders, directors, officers, agents or employees of Administrative Agent and/or the Lenders by reason of (a) ownership of the Mortgaged Property or any interest therein, or receipt of any Rents or other sum therefrom, (b) any accident to, injury to or death of persons or loss of or damage to Mortgaged Property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, (c) any failure on the part of Borrower or any guarantor of the Notes to perform or comply with any of the terms, covenants, conditions and agreements set forth in this Mortgage, the Notes, any of the other Loan Documents, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by Borrower, or any guarantor of the Notes, or any other persons directly or indirectly liable for the payment of the Debt, (d) any failure on the part of Borrower to perform or comply with (i) any other agreement executed by Borrower or any guarantor of the Notes, or (ii) any requirement of law, (e) payment of sums for the protection of the lien and security interest of Administrative Agent on behalf of the Lenders in and to the Mortgaged Property, (f) performance of any labor or services or the furnishing of any materials or other Mortgaged Property in respect of the Mortgaged Property or any part thereof for construction or maintenance or otherwise, or (g) any action brought against Administrative Agent and/or the Lenders attacking the validity, priority or enforceability of this Mortgage, the Notes, any other Loan Document, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by Borrower or any other persons directly or indirectly liable for the payment of the Debt. Any amounts payable to Administrative Agent and/or the Lenders under this paragraph shall bear interest at the Default Rate and shall be secured by this Mortgage. In the event any action, suit or proceeding is brought against Administrative Agent and/or the Lenders or the members, partners, stockholders, directors, officers, agents or employees of Administrative Agent and/or the Lenders by reason of any such occurrence, Borrower, upon the request of Administrative Agent and at Borrower's sole expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Borrower and approved by Administrative Agent. Such obligations under this Section shall survive the termination, satisfaction or release of this Mortgage.

33. OFAC Covenant. Borrower shall ensure, and cause each of its subsidiaries to ensure, that (i) no person who owns twenty percent (20.00%) or more of the equity interests in Borrower, or otherwise controls Borrower or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (viii) the proceeds of the Loan do not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) it shall

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comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

34. Construction Loan. The Note evidences a debt created by one or more disbursements made by Lender to Borrower to finance the cost of the construction of certain Improvements upon the Land in accordance with the provisions of the Loan Agreement, and this Security Instrument is a construction mortgage as such term is defined in Section 9-334(h) of the Code.

35. Miscellaneous.

(a) Time is of the Essence. Time is of the essence of this Mortgage.

(b) Captions and Pronouns. The captions and headings of the various Sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

(c) Borrower Not a Joint Venturer or Partner. Borrower, Administrative Agent and the Lenders acknowledge and agree that in no event shall Administrative Agent and/or the Lenders be deemed to be a partner or joint venturer with Borrower. Without limitation of the foregoing, Administrative Agent and/or the Lenders shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Debt, or otherwise.

(d) Replacement of the Notes. Upon notice to Borrower of the loss, theft, destruction or mutilation of the Notes, Borrower will execute and deliver, in lieu thereof, replacement Notes, identical in form and substance to the Notes and dated as of the date of the Notes and upon such execution and delivery all references in any of the Loan Documents to the Notes shall be deemed to refer to such replacement note.

(e) Waiver of Consequential Damages. Borrower covenants and agrees that in no event shall Administrative Agent and/or the Lenders be liable for consequential damages, whatever the nature of a failure by Administrative Agent and/or the Lenders to perform their obligation(s), if any, under the Loan Documents, and Borrower hereby expressly waives all claims that it now or may hereafter have against Administrative Agent and/or the Lenders for such consequential damages.

(f) After Acquired Mortgaged Property. The lien hereof will automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.

(g) Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any

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monetary sum, then Administrative Agent, on behalf of the Lenders may, at its option declare the Debt immediately due and payable.

(h) Interpretation of Agreement. Should any provision of this Mortgage require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Mortgage, including, without limitation, all Exhibits attached to this Mortgage.

(i) Joint and Several Obligations; Counterparts. If this Mortgage is executed by more than one Borrower, (i) the obligations and liabilities of Borrower under this Mortgage shall be joint and several and shall be binding upon and enforceable against each Borrower and their respective successors and assigns, and (ii) this Mortgage may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Mortgage.

(j) Effect of Extensions and Amendments. If the payment of the Debt, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Lender, notwithstanding any such extension, variation or release.

(k) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting Administrative Agent and/or any Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Premises by Administrative Agent pursuant to this Mortgage.

(l) No Merger. The parties hereto intend that the Mortgage and the Lien hereof shall not merge in fee simple title to the Premises, and if Administrative Agent acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Administrative Agent as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(m) Complete Agreement. This Mortgage, the Notes and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Borrower and Administrative Agent, on behalf of the Lenders.

36. JURISDICTION AND VENUE. EACH BORROWER AND MEMBER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER OR MEMBER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS



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MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF ADMINISTRATIVE AGENT INITIATES SUCH ACTION, ANY COURT IN WHICH ADMINISTRATIVE AGENT SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. EACH BORROWER AND MEMBER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY ADMINISTRATIVE AGENT IN ANY OF SUCH COURTS. EACH BORROWER AND MEMBER WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER AND MEMBER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY ADMINISTRATIVE AGENT OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY ADMINISTRATIVE AGENT OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER AND MEMBER HEREBY WAIVE THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

37. Waiver of Jury Trial. BORROWER, ADMINISTRATIVE AGENT, AND LENDERS HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER, ADMINISTRATIVE AGENT AND THE LENDERS ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP AMONG BORROWER, ADMINISTRATIVE AGENT AND THE LENDERS. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE LENDERS TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

38. Additional Waivers. BORROWER EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY ADMINISTRATIVE AGENT AND/OR THE LENDERS ON THIS MORTGAGE, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY ADMINISTRATIVE AGENT.

39. Compliance with Loan Agreement. Borrower will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

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40. Provisions of Loan Agreement. The proceeds of the Notes are to be disbursed by Administrative Agent in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Borrower covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Borrower for the enforceability of this Mortgage and the Notes, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Notes, shall be secured by this Mortgage.

41. Rights, Powers and Remedies Cumulative. Each right, power and remedy of Administrative Agent and/or the Lenders as provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Applicable Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Administrative Agent and/or the Lenders of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Administrative Agent and/or the Lenders of any or all such other rights, powers or remedies.

42. No Waiver by Administrative Agent and/or the Lenders. No course of dealing or conduct by or among Administrative Agent, the Lenders and Borrower shall be effective to amend, modify or change any provisions of this Mortgage or the other Loan Documents. No failure or delay by Administrative Agent and/or the Lenders to insist upon the strict performance of any term, covenant or agreement of this Mortgage or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lender from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Administrative Agent and/or the Lenders shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither Borrower nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Administrative Agent and/or the Lenders to comply with any request of Borrower or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Lender, or (c) Administrative Agent's extending the time of payment or modifying the terms of this Mortgage or any of the other Loan Documents without first having obtained the consent of Borrower or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Administrative Agent may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Mortgage or any of the other Loan Documents without in any way impairing or affecting the lien of this Mortgage or the priority of this Mortgage over any subordinate lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Mortgage. Administrative Agent, on behalf of the Lenders may resort to the security or collateral described in this Mortgage or any of the other Loan Documents in such order and manner as Administrative Agent, on behalf of the Lenders may elect in its sole discretion.

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43. Waivers and Agreements Regarding Remedies. To the full extent Borrower may do so, Borrower hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Applicable Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, extension and notice of election to accelerate the Obligations;

(b) waives all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Applicable Law pertaining to the marshaling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Administrative Agent and/or the Lenders under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of Administrative Agent and/or the Lenders to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Applicable Laws pertaining to the rights and remedies of sureties.

(e) As used herein, "Claim" means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including reasonable attorneys' fees, costs and expenses and fees, costs and expenses of consultants, contractors and experts.

44. Future Advances. This Mortgage also secures all future advances made or to be made under the Loan Documents, if any, which future advances shall have the same priority as if all such future advances were made on the date of execution hereof. Nothing in this Section 44 or in any other provision of this Mortgage shall be deemed either (a) an obligation on the part of Administrative Agent and/or the Lenders to make any future advances other than in accordance with the terms and provisions of the Loan Documents, or (b) an agreement on the part of Administrative Agent and/or the Lenders to increase the principal amount of the Notes to any amount in excess of Thirty-Two Million Four Hundred Sixty Thousand Eight Hundred Eighty and No/100 Dollars (\$32,460,880.00).

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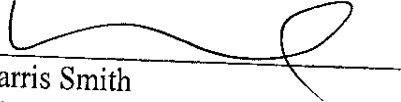
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IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly executed and delivered as of the day and year first above written.

**BORROWER:**

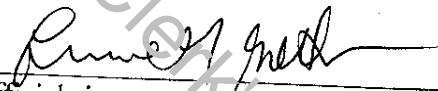
**HURON SEDGWICK DEVELOPMENT LLC,**  
an Illinois limited liability company

By: Harris Management, Ltd.,  
its Authorized Manager

By:   
Name: W. Harris Smith  
Title: President

STATE OF ILLINOIS  
COUNTY OF COOK

On this 5<sup>th</sup> day of November, 2015, before me, the undersigned notary public, personally appeared W. Harris Smith, the President of Harris Management, Ltd., the Authorized Manager of Huron Sedgwick Development LLC, an Illinois limited liability company, who proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
(Official signature and seal of notary)

MY COMMISSION EXPIRES:



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## EXHIBIT A

### LEGAL DESCRIPTION

PARCEL 1:

LOTS 23 TO 26, BOTH INCLUSIVE, IN BLOCK 7 IN HIGGINS LAW AND CO'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 27 AND 28 IN BLOCK 7 IN HIGGINS LAW AND COMPANY'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENTS FOR THE BENEFIT OF PARCELS 1 AND 2 SET FORTH IN THE EASEMENT AGREEMENT AND COVENANT DATED MARCH 23, 2015 AND RECORDED MARCH 30, 2015 AS DOCUMENT NUMBER 1508957365.

### PERMANENT INDEX NUMBERS:

17-09-120-013-0000

17-09-120-014-0000

### COMMON ADDRESS:

400-410 WEST HURON STREET, CHICAGO, ILLINOIS 60654

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## EXHIBIT B REQUIRED INSURANCE

General and Access Liability Insurance (including workman's comp)	ACORD 25 Borrower must be named insured or additional insured Name bank as additional insured \$1,000,000 per occurrence and \$2,000,000 aggregate
Builder's Risk (Construction Loans) <b>NOTE:</b> Can be carried by borrower or general contractor (needs to be addressed)	ACORD 27 OR 28 Borrower must be named insured or additional insured Name bank as certificate holder, mortgagee and loss payee Replacement Cost Coverage Property description must be on certificate
All Risk Insurance (to be received upon substantial completion)	ACORD 27 or 28 Borrower must be named insured or additional insured Name bank as certificate holder, mortgagee and Lender's loss payee Replacement Cost Coverage Property description must be on certificate
Evidence of Property Coverage -- All Business Assets	ACORD 27 Borrower named as insured or additional insured MB Financial Bank, NA as certificate holder Certificate holder must be named Lender's loss payee Replacement Cost
Loss of Income/Rents (income producing properties)	12 months coverage Borrower named as insured or additional insured MB Financial Bank, NA as certificate holder Certificate holder must be named Lender's loss payee
Machinery/Equipment	ACORD 27 Borrower named as insured or additional insured MB Financial Bank, NA as certificate holder Certificate holder must be named Lender's loss payee
Flood Insurance (If applicable)	Borrower named as insured or additional insured MB Financial Bank, NA as certificate holder Certificate holder must be named Lender's loss payee, Mortgagee \$500,000 minimum (as defined by FEMA)

Certificate should reflect the following:

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- MB Financial Bank, NA, 6111 North River Road, Attn: Loan Coordination, 9<sup>th</sup> Floor, Rosemont, IL 60018

**NOTICE OF CANCELLATION MUST BE 30 DAYS (WHEN POSSIBLE); 10 DAYS FOR NON-PAYMENT.**

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